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Before the
STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In the Matter of

Global NAPs Illinois, Inc.

Petition for Arbitration Pursuant to Section
252(b) of the Telecommunications Act of
1996 to Establish an Interconnection
Agreement with Verizon North Inc, *f/k/a*
GTE North Incorporated and Verizon
South Inc. *f/k/a* GTE South Incorporated

Case No.: 02-0253

REPLY BRIEF OF THE PETITIONER, GLOBAL NAPS ILLINOIS, INC.

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I. Introduction.

On July 22nd, 2002, petitioner, Global NAPs, Inc. ("Global") and Verizon North, Inc. ("the ILEC") filed initial briefs in the above-captioned proceeding. Subsequent to filing of the initial briefs, the FCC issued a ruling which compels this Commission to reject Verizon's arguments and adopt Global's positions on the "key" issues (and its proffered contract language). *Inter alia*, the "key" issues in contention are: (1) whether the ILEC can impose origination fees to recover transport costs for carrying its customers' traffic on its side of the network when Global elects to interconnect via a single point of interconnection under section 251(c)(2) ("Transport"); (2) whether the ILEC can impose access or transport charges on Global when it utilizes virtual NXX codes¹ ("VNXX"); and (3) whether the ILEC can impose access charges on Global for terminating Global's local traffic when Global offers LATA wide local calling area service ("Local Calling Area"). Global provides a summary of its positions, relevant contract provisions and legal authority of all positions but elects to rest on "non-key" issues such as trunking, audits, insurance, etc.

This brief will explain why federal law mandates that Global be permitted to designate a single point of interconnection within a LATA without additional financial penalties being imposed by Verizon, why Verizon is precluded under federal law from imposing transport costs on its side of the point of interconnection on Global, why NXXs

¹ Foreign Exchange ("FX") Service is a telecommunications service that has been available for years and is simply a response to customer demand for dial tone in an exchange separate from the customer's physical location. Users of FX service typically desire to establish a local business presence in an area other than their physical location, and have typically determined that the ability to be reached via a local call is an integral component of that business presence. The same functionality is provisioned through the use of Virtual NXX Codes ("VNXX"), which rates a call as to one exchange but routes the call to a separate exchange.

are a valid competitive alternative to Verizon's FX service, and why Global's LATA-wide local calling area should not have access charges imposed on it.

II. Summary Positions.

ISSUE	SECTION	TITLE	GLOBAL NAPS' POSITION
1, 2	Glossary Sections 2.45, 2.66; Interconnection Attachment Sections 2, 3, 5.2.2, 5.3, 7.1.	Single Point of Interconnection per LATA	<p>The FCC states clearly that CLECs are not required to install more than one POI per LATA and may establish a single POI per LATA. Global has the right to designate any technically feasible point at which both Parties must deliver traffic to the other Party.</p> <p>The FCC explicitly prohibits carriers from charging origination or transport fees on their side of the point of interconnection.</p> <p>Each carrier is financially responsible for transporting telecommunications traffic to the single POI.</p> <p>Global's Legal Authority:</p> <p><i>In the Matter of the Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, Memorandum Opinion and Order, CC Docket No. 00-218 (Rel. July 17, 2002); In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration, CC Docket No. 00-249 (Rel. July 17, 2002); In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., CC Docket No. 002-51 (DA 02-1731) (Rel. July 17, 2002) ("FCC Virginia Order") ¶¶52, 53.</i></p> <p><i>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd</i></p>

ISSUE	SECTION	TITLE	GLOBAL NAPS' POSITION
			<p>15499 ¶ 209 (1996).</p> <p><i>Application of Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas</i>, Memorandum Report and Order, FCC 00-238, CC Docket No. 00-65, 15 FCC Rcd 18354 ¶ 78 (June 30, 2000) ("Texas 271 Order").</p> <p><i>US West Communications, Inc. v. MFS Intelenet, Inc.</i>, 193 F.3d 1112 (9th Cir. 1999).</p> <p><i>In the Matter of Developing a Unified Intercarrier Compensation Regime</i>, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92, 16 FCC Rcd 9610 ¶¶ 70, 72 (Apr. 27, 2001).</p> <p><i>In the Matter of Joint Application by Sprint - Florida Communications Inc., Southwestern Bell telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</i>, FCC No. 01-29, CC Docket No. 00-217, 16 FCC Rcd 6237 ¶¶ 233-235 (Jan. 22, 2001).</p> <p><i>In the Matter of the Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS WorldCom Pursuant to Section 252(b) of the Telecommunications Act of 1996</i>, 1999 Cal. PUC LEXIS 652, Decision No. 99-09-069, Application No. 99-03-047 (Cal. P.U.C. 1999).</p> <p><i>Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996</i>, A.00-01-022, D.00-08-011 Addendum to Final Arbitrator's Report (Cal. P.U.C. July 17, 2000).</p> <p>AT&T Arbitration Order, 2001 N.Y. PUC LEXIS 495, at * 50 (July 30, 2001); <i>see also</i> <i>Petition of Global Naps, Inc., Pursuant To Section 252 (B) Of The Telecommunications Act Of 1996, For Arbitration To Establish An Intercarrier Agreement With Verizon New</i></p>

ISSUE	SECTION	TITLE	GLOBAL NAPS' POSITION
			<p><i>York, Inc.</i> , Case 02-C-0006 (NYPSC May 22, 2002).</p> <p><i>Re AT&T Communications of the Southern States Inc. d/b/a AT&T</i>, Docket No. 000731-TP PSC-01-1402-FOF-TP, Final Order on Arbitration (Fla. P.S.C. June 28, 2001).</p> <p><i>Global Naps, Inc. Petition For Arbitration Pursuant To Section 252 Of The Telecommunications Act Of 1996 To Establish An Interconnection Agreement With Illinois Bell Telephone D/B/A Ameritech</i>, 01-07-86 Arbitration Decision at 8 (Ill. C.C. May 14, 2002).</p>
3	Glossary Sections 2.34, 2.47, 2.56, 2.77, 2.83, 2.91; Interconnection Attachment Sections 2, 6.2, 7.1, 7.3.4, 13.3.	LATA-Wide Local Calling Areas and Mutual Compensation	<p>Global's local calling areas should not be set by ILEC constraints.</p> <p>The provision of expanded local calling areas is a competitive benefit to Illinois consumers.</p> <p>All intra-LATA traffic exchanged between Global and Verizon should be treated as subject to cost-based "local" compensation under Section 251(b)(5); and should not be subject to intrastate access charges.</p> <p>There is no economic or technical reason for local calling areas to be any smaller than a LATA.</p> <p>There are good reasons for local calling areas to be at least as large as a LATA.</p> <p>Global should not be economically</p>

ISSUE	SECTION	TITLE	GLOBAL NAPs' POSITION
			<p>constrained by an interconnection agreement to mirror, or otherwise conform, to Verizon's legacy network.</p> <p>The interconnection agreement should reflect the economic and technical reality that the distinction between "local" and "toll" calls has become artificial.</p> <p>The interconnection agreement should allow Global the maximum economic flexibility to compete in Illinois by offering local calling area options that may exceed those currently offered by Verizon.</p> <p>Consumers benefit from a regime in which competing carriers are contractually and economically free to adopt local calling area definitions that differ from those of the ILEC.</p> <p>CLECs should not be limited to competing solely with respect to price, nor should they be expected to become mere "clones" of the ILEC with respect to the services they offer.</p> <p>Global's Legal Authority:</p> <p><i>Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service</i>, Decision No. 99-09-029; Rulemaking No. 95-04-043, Investigation No. 95-04-044, 1999 Cal. PUC LEXIS 649 *25 (Cal. P.U.C. Sept. 2, 1999).</p> <p><i>In the Matter of the Petition By PAC-West Telecomm, Inc for Arbitration of an Interconnection Agreement with Citizens Telecommunications Company of California, Inc.</i> Decision No. 99-12-021 1999 Cal. PUC LEXIS 783 (Cal. P.U.C. Dec. 2, 1999).</p>

ISSUE	SECTION	TITLE	GLOBAL NAPs' POSITION
4	Glossary Sections 2.71-73, 2.77; Interconnection Attachment Sections 9.2 and 13.	Deployment of NXX Codes	<p>The FCC specifically allowed CLECs to use VNXX service in Virginia in a similar arbitration with Verizon.</p> <p>Global can offer an FX-like service to compete with Verizon. The assignment of NXX codes does not require geographic correlation.</p> <p>The assignment of NXX codes should be made at the CLEC's option based on switch assignment.</p> <p>There is no requirement that an LEC must link the NXX code of the telephone number assigned to a particular customer with the location of that customer's premises or CPE.</p> <p>The primary function of the NXX code is to provide routing information. The "rating" function of NXX codes is no longer valid in a competitive environment characterized by the use of modern digital switches and advanced network technologies.</p> <p>Some types of telecommunications customers desire to achieve a "presence" in a location other than the one in which the customer is physically located ("foreign exchange" or "FX" service). The point of such an arrangement is to allow callers from localities for which the customer's FX is a local call to reach that customer without being subject to a toll charge.</p> <p>Verizon and virtually all other ILECs offer these so-called "FX" service arrangements.</p> <p>Currently, if a CLEC customer dials a Verizon FX customer's number, the call will be rated as "local" and the CLEC will be subject to a reciprocal compensation payment to Verizon.</p> <p>Verizon's attempt to arbitrarily restrict the assignment of NXX codes (by referring to the customers' physical location), limits competitors' ability to deploy new networks.</p> <p>Economically, Verizon's costs of originating a call will not differ based upon the ultimate location to which a CLEC delivers it.</p> <p>Placing strict limitations on the assignment of</p>

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			<p>NXX codes by referring to a customer's physical location would also give Verizon the ability to impose its own retail pricing structure upon its CLEC rivals by reclassifying local calls as toll calls.</p> <p>Access to the Internet can be made affordable and readily available throughout the State through the flexible use of NXX codes, which allows ISPs to have a single point of presence that can be reached by dialing a local number regardless of the physical location of the Internet subscriber within the LATA.</p> <p>Global's Legal Authority:</p> <p><i>AT&T Decision 2000 Cal. PUC LEXIS 564 at *25; Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service, Decision No. 99-09-029, Rulemaking No. 95-04-043; Investigation 95-04-044, 1999 Cal. LEXIS 649 *32 (Cal. P.U.C. Sept. 2, 1999).</i></p> <p><i>Draft Decision of the State of Connecticut Dept. of Public Utility Control, DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried over Foreign Exchange Service Facilities, Docket No. 01-01-29 at § IV.B (rel. Mar. 29, 2001)</i></p> <p><i>In the Matter of the Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, 2001 Ky. PUC LEXIS 873 (Mar. 14, 2001).</i></p> <p><i>Level 3 Communications, Inc. Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, 2000 Ill. PUC LEXIS 676, *10-19 (Aug. 30, 2000).</i></p> <p><i>In re MCImetro Access Transmission Services, Docket No. P-474, Sub 10, North Carolina Utilities Commission, WL 468490,</i></p>

ISSUE	SECTION	TITLE	GLOBAL NAPS' POSITION
			<p>*50-58 (N.C.U.C.) (rel. April 03, 2001).</p> <p><i>In the Matter of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996</i>, Docket No. P-474, Sub 10, Order Ruling on Objections and Requiring the Filing of Composite Agreement (rel. Aug. 2, 2001).</p> <p><i>CenturyTel v. Michigan PSC</i>, 2001 Mich. App. LEXIS 69 (Mich. Ct. App. Apr. 13, 2000).</p>
5	<p>GT&C Section 4; Glossary Sections 2.42, 2.56, 2.74 – 75; Interconnection Attachment Section 6.1.1, 7; Additional Services Attachment Section 5.1.</p>	<p>Specific recognition of revisiting reciprocal compensation provisions in light of pending FCC action.</p>	<p>The proposed interconnection agreement submitted by the ILEC acknowledged that Global has a right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised.</p> <p>The language proposed by Verizon is inadequate because such controversy has surrounded the issue of reciprocal compensation.</p> <p>The <i>ISP Remand Order</i> is being revisited by the FCC and given its uncertainty, deserves special attention. If ultimately overturned, the ILEC acknowledges that Global should have the right to demand renegotiation, and, if necessary, further arbitration. The agreement should, therefore, clearly state this in light of the pending decision on this matter.</p> <p>Global's Legal Authority:</p> <p><i>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</i>, Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, CC Docket Nos. 96-98, 99-68 (rel. Apr. 27, 2001).</p> <p><i>Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service</i>, Decision No. 98-10-057, 1998 Cal. PUC LEXIS 875, *26-*27 (1998).</p>

ISSUE	SECTION	TITLE	GLOBAL NAPS' POSITION
			<p><i>Order Instituting Rulemaking on the Commission's Own Motion into reciprocal compensation for telephone traffic transmitted to Internet Service Providers modems, Rulemaking No. 00-02-005, 2000 Cal. PUC LEXIS 51 (Cal. P.U.C. 2000).</i></p>
7	<p>Glossary Sections 2.93-95; Interconnection Attachment Sections 2.2-2.4, 5, 6, 9.</p>	<p>Trunking Requirements</p>	<p>Two-way trunking should be available to Global at Global's request.</p> <p>Global has the discretion to dictate how the Parties will interconnect and may use two-way trunking for interconnection. Accordingly, the agreement should provide less onerous restrictions on the use of two-way trunking for all types of traffic whenever possible, including but not limited to: local traffic, toll traffic, exchange access traffic, 800/8YY traffic, and 9-1-1 traffic.</p> <p>Global's Legal Authority:</p> <p><i>Application by AT&T Communications of California, Inc for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, 2000 Cal. PUC LEXIS 564 *18 (Aug. 3, 2000).</i></p> <p><i>Application by Pacific Bell Telephone Company (U 1001C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, L.L.C. (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Decision 01-09-054, 52, 68 (Cal. P.U.C. Sept. 20, 2001).</i></p>

ISSUE	SECTION	TITLE	GLOBAL NAPs' POSITION
8	GT&C Section 1 and throughout the contract and attachments.	Parties' Tariffs Do Not Supersede the Agreement	<p>A final executed, or arbitrated, interconnection agreement represents the principal contract between the two interconnecting parties. The parties' duties and obligations are governed by the "four corners" of the document, not by outside documents under the control of one party. Verizon may not affirmatively impose additional obligations or alter its responsibility under the agreement through its tariff modifications.</p> <p>Global's Legal Authority:</p> <p><i>Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCI Metro Access Transmission Services, L.L.C. (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Final Arbitrator's Report, Application 01-01-010 (Cal. P.U.C. Filed January 8, 2001).</i></p> <p><i>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, ¶ 610 (1996).</i></p>
9	GT&C Section 31.	Agreement Should Include Strong Performance Benchmarks and Service Provisioning Standards	Settled
10	G T&C Section 21.	Agreement Should Include Reasonable Insurance Limits	The Agreement should be modified to include more reasonable insurance limits that reflect the relative economic position of interconnecting CLECs. No insurance limit should exceed \$1,000,000.
11	GT&C § 7, Interconnection Attachment Section 6.3, 10.13. Additional Services Attachment Section 8.5.4.	Agreement Should Not Authorize or Permit Either Party to Audit the Other Party's Books	<p>The Agreement should not authorize or permit either Party to audit, review or otherwise access the other Party's confidential records and systems.</p> <p>Global provides traffic reports and voluntarily agrees to have these subject to audit.</p>

III. Argument.

The Commission's prior rulings are vindicated²; Verizon's VGRIP is vanquished; Global's position is victorious. The FCC has issued unquestionable guidance in interpreting federal law which mandates CLECs be provided with the opportunity to interconnect at a single point in a LATA; precludes imposition of charges on Verizon's side of this point of interconnection and further eliminates the ability of Verizon to impose access charges when Global uses non-geographically correlated NXXs.

Verizon's proposal for geographically relevant interconnection points, "GRIP" or virtually geographically relevant interconnection points "VGRIP" both append costs to Global if it elects to use a single point of interconnection. Verizon proposes a series of charges which undermine the use of a LATA-wide single point of interconnection by imposing additional transport, origination and other costs. Global will address the first two issues in an integrated fashion in response to Verizon's proposal(s).

Issue 1: SHOULD EITHER PARTY BE REQUIRED TO INSTALL MORE THAN ONE POINT OF INTERCONNECTION PER LATA?

Issue 2: SHOULD EACH PARTY BE RESPONSIBLE FOR THE COSTS ASSOCIATED WITH TRANSPORTING TELECOMMUNICATIONS TRAFFIC TO THE SINGLE POI?

As explained below, federal law clearly establishes Global's right to establish a single point of interconnection ("POI")³ with Verizon in each Local Access and

² *Global Naps, Inc. Petition For Arbitration Pursuant To Section 252 Of The Telecommunications Act Of 1996 To Establish An Interconnection Agreement With Illinois Bell Telephone D/B/A Ameritech*, 01-07-86 Arbitration Decision (Ill. C.C. May 14, 2002) ("*Global Illinois Order*") at 8.

³ For the purposes of Global's petition and its interconnection with Verizon, the Interconnection Point ("IP") and single POI are interchangeable because of the architecture of Global's network. Verizon's Template Agreement defines these two terms differently and requires GNAPs to transport GNAPs' originating traffic to multiple Verizon IPs within a LATA. GNAPs employs a fiber optic meet point to interconnect with Verizon that establishes one IP and one POI per LATA for the mutual exchange of traffic. In this situation, this single IP/POI determines the financial responsibility of both Parties.

Transport Areas ("LATAs") in which Global interconnects with Verizon.⁴ Federal law also requires Verizon to bear full financial responsibility for delivering Global-bound traffic from Verizon's own customers to the single POI, just as Global must deliver Verizon-bound traffic to that same POI.⁵ The FCC clarified both of these contested issues by a ruling favoring Global's position on July 17, 2002.⁶

A. *Verizon must allow Global to designate a single point of interconnection within each LATA.*

Under federal law, a CLEC (competitive local exchange carrier) such as Global may elect to interconnect with an ILEC (incumbent local exchange carrier) such as Verizon at any single, technically feasible point that the CLEC designates within the ILEC's network. The FCC declared:

Section 251(c)(2) of the Act gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at *any* technically feasible *point* on that network, *rather than* obligating such carriers to transport traffic to less convenient or efficient interconnection *points*.

⁴ See *US West Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112 (9th Cir. 1999) (affirming arbitration decision that required Parties to adopt a single point of interconnection based on the statutory requirement that LECs be permitted to interconnect at any technically feasible point).

⁵ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92, 16 FCC Rcd 9610, ¶¶ 70, 72 (Apr. 27, 2001) ("Intercarrier Compensation NPRM"); see also *In the Matter of Joint Application by Sprint - Florida Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, FCC No. 01-29, CC Docket No. 00-217, 16 FCC Rcd 6237, ¶¶ 233-235 (Jan. 22, 2001) ("Oklahoma/Kansas 271 Order").

⁶ *Memorandum Opinion and Order, In the Matter of the Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218; *In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration*, CC Docket No. 00-249; *In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, CC Docket No. 002-51 (DA 02-1731) (Rel. July 17, 2002) ("FCC Virginia Order").

Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic.⁷

Last month, the FCC addressed this same issue raised in Global's petition, and resolved it in Global's favor as follows:

Under the Commission's rules, competitive LECs may request interconnection at *any* technically feasible point.¹¹⁷ *This includes the right to request a single point of interconnection in a LATA.*¹¹⁸

FCC Virginia Order ¶ 52 (emphasis added). The references cited in the footnotes of the above passage from the *FCC Virginia Order* provide the legal foundation for the FCC's determination, and are substantially the same as those referenced by Global in its Arbitration Petition.⁸

Incumbent providers have already challenged this requirement and failed. The United States Courts of Appeals for the Third and Ninth Circuit have explicitly ruled that a CLEC has the right to establish a single POI per LATA for the mutual exchange of telecommunications traffic.⁹ The Third Circuit recently explained:

The decision where to interconnect and where not to interconnect must be

⁷ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, ¶ 209 (1996) ("Local Competition Order") (emphasis added); see also *Application of Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Report and Order, FCC 00-238, CC Docket No. 00-65, 15 FCC Rcd 18354, ¶ 78 (June 30, 2000) ("Texas 271 Order").

⁸ Specifically, footnote 117 cites 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a)(2), and footnote 118 cites *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9634, 9650, paras. 72, 112 (2001) (*Intercarrier Compensation NPRM*); *SWBT Texas 271 Order*, 16 FCC Rcd at 18390, para. 78 n.174.

⁹ See *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491 (3rd Cir. Nov. 2, 2001) (ruling that it is technically feasible for a CLEC to interconnect at only one point within a LATA and that Verizon failed to prove that it is technically necessary to interconnect at each access tandem serving area); see also, *US West Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112 (9th Cir. 1999) (affirming arbitration decision that required Parties to adopt a single POI based on the statutory requirement that LECs be permitted to interconnect at any technically feasible point).

left to WorldCom, *subject only to concerns of technical feasibility*. Verizon has not presented evidence that it is not technically feasible for WorldCom to interconnect at only one point within a LATA. Nor has Verizon shown that it is technically necessary for WorldCom to interconnect at each access tandem serving area. *The PUC's requirement that WorldCom interconnect at these additional points is not consistent with the Act.*¹⁰

The FCC has interpreted Federal law and its interpretation has already been upheld on appeal. As such, the Arbitrator should rule that Global may establish a single POI—without any of the additional financial penalties sought by Verizon. To implement a ruling consistent with this interpretation, Global's proposed contract language included in Exhibit B should be adopted. See Agreement, Glossary, Sections 2.45, 2.66; Interconnection Attachment, Sections 2.1, 2.1.2, 2.3, 2.4, 3, 5.2.2, 5.3, and 7.1.1.1.

B. Federal law prohibits Verizon from charging Global for costs on its side of the network as determined by the point of interconnection between the carriers.

As explained in its Arbitration Petition, testimony and Initial Brief, Global seeks a ruling consistent with the Commission's prior ruling¹¹, that each Party is responsible for transporting telecommunications traffic on its "side" of the POI, and is obligated to compensate the terminating Party for the transport and termination of its originating traffic from the POI to the designated end user via reciprocal compensation. Such a ruling is consistent with this Commission's precedent. This position is supported by

¹⁰ *MCI Telecommunications Corp.*, 271 F.3d at 518 (emphasis added).

¹¹ [T]he Commission is of the opinion that Ameritech and Global should be responsible both financially and physically on its side of the single POI. Ameritech's arguments, while lengthy are not persuasive to require the adoption of the Ameritech proposal. The Commission concurs that the transportation of calls to a single POI in each LATA would not significantly increase transport costs, but rather the incremental costs that Ameritech would incur would be *de minimus*. Ameritech's position could have the effect of undermining the single POI requirement. *Global Illinois Order* at 8.

Federal law and is reinforced by FCC rules and decisions.¹²

The FCC has ruled that each interconnecting party must transport its originating traffic to the single POI at its own cost.¹³ After review of exhaustive testimony filed by Verizon and three CLECs and multi-week live hearings, the FCC issued a definitive recitation of the relevant federal law and interpreted this law consistent with Global's position that Verizon should be responsible for all costs on its network on its side of the point of interconnection. The discussion of the issue preceding its determination indicates that the issue Global framed is identical (as is Verizon's response) to that presented by CLECs in the Virginia Arbitration. The result, therefore, should also be identical. The FCC found:

The Commission's rules implementing the reciprocal compensation provisions in section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC's network.¹¹⁹ Furthermore, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic.

* * *

Verizon's interconnection proposals require competitive LECs to bear Verizon's costs of delivering its originating traffic to a point of interconnection beyond the Verizon-specified financial demarcation point, the IP. Specifically, under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection.¹²⁴ By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection

¹² See 47 C.F.R. §§ 51.305(a)(2), 51.703(b); *see also* Oklahoma/Kansas 271 Order at ¶¶ 233-35 (these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network).

¹³ *See, e.g.,* Inter-carrier Compensation NPRM at ¶ 70; *see also* Oklahoma/Kansas 271 Order at ¶¶ 233-35.

designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point.¹²⁵ Accordingly, we adopt the petitioners' proposals.

FCC Virginia Order ¶¶ 52, 53. Global bases its argument against imposition of transport costs, at least in part, on section 51.703(b), just as the FCC did in footnote 119.

The FCC has interpreted the relevant governing law consistent with Global's position. Moreover, its interpretation is consistent with rulings that Global cited based on other state commissions' orders in support of its position, such as New York. The New York Commission rejected Verizon's attempt to avoid paying these costs just as the FCC did and explained that it would "keep in place the existing framework that makes each party responsible for the costs associated with the traffic that their respective customers originate until it reaches the point of interconnection."¹⁴ The New York Commission explained "that a carrier is responsible for the costs to carry calls on its own network."¹⁵ The Illinois Commerce Commission also found "... that Ameritech and Global should be responsible both financially and physically on its side of the single POI."¹⁶

As stated in the Arbitration Petition, Global's position is that each party is equally responsible for absorbing its costs of carrying traffic on its side of the network to the Parties' single POI. There is no distinction between Global's position and that of the FCC Virginia Order. The FCC has clearly spoken. Just as Global has argued:

¹⁴ See AT&T Arbitration Order, 2001 N.Y. PUC LEXIS 495, at * 50 (July 30, 2001); see also *Petition of Global Naps, Inc., Pursuant To Section 252 (B) Of The Telecommunications Act Of 1996, For Arbitration To Establish An Intercarrier Agreement With Verizon New York, Inc.*, Case 02-C-0006 (NYPSC May 22, 2002).

¹⁵ *Id.*

- Global is entitled to designate a single point of interconnection within a LATA, subject only to technical feasibility.¹⁷
- The assumption of financial responsibility is at the point of interconnection where Global and Verizon exchange traffic, not at some fictional interconnection point.
- Each carrier must transport all traffic to be exchanged in the LATA to this point and is precluded from charging the other carrier for transport or other costs on its side of the point of interconnection.

Clearly, Verizon's proposal is inconsistent with federal law and must be rejected.

Therefore, Global requests adoption of its proposed contract language included in Exhibit B.¹⁸ See Agreement, Interconnection Attachment, Sections 7.1.1.2 and 7.1.1.3 and related sections cited elsewhere in this Petition and throughout the Agreement.

C. *Federal law prohibits Verizon from imposing origination charges on non-geographically correlated ("VNXX") traffic.*

Verizon acknowledges that Global may assign a virtual NXX to a customer located outside the calling area to which that NXX is assigned but then claims that the actual originating and terminating points of the end-to-end call should determine what intercarrier compensation applies. Even though Verizon's costs are completely unaffected by where Global delivers a call originating on Verizon's network, its proposal would use virtual NXX ("VNXX") as a pretext to avoid paying reciprocal compensation and to extort access charges from Global. This clearly violates federal law.

¹⁶ *Global Naps, Inc. Petition For Arbitration Pursuant To Section 252 Of The Telecommunications Act Of 1996 To Establish An Interconnection Agreement With Illinois Bell Telephone D/B/A Ameritech*, 01-07-86, Arbitration Decision at 8 (Ill. C. C. May 14, 2002).

¹⁷ See also, *id* ¶ 67.

¹⁸ In the event that despite the overwhelming weight of evidence, the Board determines there should be a subsidy from GNAPs to Verizon for transport of Verizon-originating traffic to the POI, it is critical that this subsidy be based on *incremental* costs rather than on non-cost based retail rates.

Reciprocal compensation traffic is defined as any traffic that is not toll traffic, or traffic routed to an information service provider.¹⁹ VNXX traffic is not toll traffic. When a Verizon customer calls a Global FX customer, the calling party does not pay a toll charge; the customer pays the flat local rate. The VNXX traffic subject to the interconnection agreement is not routed to an information service provider,²⁰ so it is not information access traffic. Consequently, VNXX traffic is reciprocal compensation traffic.

Like intra-exchange traffic, VNXX traffic is telephone exchange service.²¹ Standard industry practice establishes that FX traffic is telephone exchange service. When a carrier provides retail FX service, telephone numbers are assigned to end users within NPA/NXXs that are associated with ILEC local calling areas other than the location of the end user. The classification (local vs. toll) of traffic delivered from the foreign exchange to the FX customer is determined as if the end user were physically located in the foreign exchange. That is, the classification of the call is determined by comparing the rate centers associated with called and calling party's NPA/NXXs, not the physical location of the customers. If this comparison identifies the call as toll, it is treated as toll. If the comparison identifies the call as local, it is treated as local. This method of determining classification and the applicability of toll charges is used throughout the industry today and is the traditional method of making this determination. Global is not aware of a single state that has implemented a different method of

¹⁹ Global discussed definitions of traffic & the intercarrier compensation rules that apply as a result, at length in its Initial Brief. *See* Global NAPs, Inc. Initial Brief at 3-20 (July 21, 2002).

²⁰ As explained below, the interconnection agreement only deals with traffic not routed to information service providers.

²¹ Recall, reciprocal compensation traffic is a broader category than telephone exchange service, it includes all telecommunications except exchange access traffic and information access traffic.

distinguishing between local and toll traffic, and every carrier in the country, including the ILEC, adheres to this standard procedure. As VNXX traffic serves precisely the same function, it must also be treated as telephone exchange service.

In its Initial Brief, Global discussed how Verizon's proposal to change the rating of calls from the conventional NPA/NXX comparison to a geographic measure defied the industry standards.²² The FCC took this analysis even farther. It states that

301. We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's language that would rate calls according to their geographical end points. Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide. The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.

* * *

302. . . . Verizon concedes that currently there is no way to determine the physical end points of a communication, and offers no specific contract proposal to make that determination.

303. Additionally, we note that state commissions, through their numbering authority, can correct abuses of NPA-NXX allocations.²³

Three things are noteworthy. First, the FCC determined that Verizon's proposal is not a viable alternative. Second, it specifically accepted each CLEC's counter-proposal which afforded the CLECs use of VNXXs. Finally, Verizon has not substantiated that any numbering abuses exist which might otherwise call for the type of Commission action indicated at paragraph 302.

²² Global NAPs, Inc. Initial Brief at 30 (July 21, 2002).

²³ *Virginia FCC Order* at ¶¶ 301-303.

As VNXX traffic is reciprocal compensation traffic, Rule 703(b) prohibits imposition of an origination charge. This means that the ILEC cannot charge transport or access charges for VNXX traffic.

a. Local Calling Area: The reciprocal compensation rules prohibit imposition of access charges on reciprocal compensation traffic.

Consider traffic originated by Global customers to be terminated by an ILEC. It makes absolutely no difference in terms of the ILEC's costs where in the LATA that traffic originates. Regardless of where it originates, the ILEC picks it up at the single POI and delivers it to its customers. Notwithstanding this, the ILECs claim the right to impose access charges if the traffic does not originate and terminate in the same ILEC local calling area, even when Global imposes no toll charges on the traffic. This is simply impermissible under federal law.

Unless the traffic is exchange access or information access traffic, it must be reciprocal compensation traffic. Traffic is only exchange access traffic when a separate toll charge is imposed upon it. As Global intends to impose no toll charge on traffic originating in terminating within the LATA, its traffic is not exchange access traffic. As it is not exchange access traffic, the ILEC may not demand access charges for terminating this traffic.

The ILECs claim that Global proposes to step into the shoes of the Commission and supersede its historic determinations delineating what traffic will be subject to access charges. As explained above, the FCC in the *ISP Remand Order* -- not Global -- supplanted the Commission's historic power of determining what traffic was subject to access charges when it determined that all telecommunications would be subject to the

reciprocal compensation rules except for the specific categories it perceived as being carved out by section 251(g) of the Telecommunications Act. Global has great reason to be dissatisfied with the FCC's order—it has lost millions of dollars in reciprocal compensation payments for ISP bound traffic it terminated—but the Order is what it is and must be followed. Verizon, which has significantly benefited by the Order, cannot be permitted to simply ignore the portions of the Order they dislike.

D. Global's LATA-wide local calling areas should not be subject to Verizon-imposed charges because these are not cost-based.

Whether Verizon's customer originates the call to a Global customer or whether a Global customer originates a call that terminates to a Verizon customer, the result is the same. In both instances an exchange is made at the point of interconnection within the LATA, regardless of whether or not the call crosses two local calling areas (as Verizon defines them). Thus, Global's FX-like service imposes no additional costs on the ILEC and consistent with the FCC's mantra that each party bear its own costs on its network (discussed in Issue 2).

Admittedly, there are costs involved in carrying calls. However, these costs are already fully recovered as reciprocal compensation²⁴. Any additional charges by Verizon would provide Verizon with a windfall while unfairly burdening Global.

Thus, the issue becomes who gets to determine local calling areas for purposes of intercarrier compensation. If Global is permitted to define its local calling areas to be LATA-wide, it will be able to compete more effectively against Verizon and exert the kinds of competition contemplated by the Act. Verizon will be forced to respond in a

²⁴ 47 USC § 251(b)(5).

competitive manner, *e.g.*, expand its calling areas, reduce charges, etc. If Verizon is allowed to assess fees on Global, Global will be economically prohibited from defining larger local calling areas than Verizon's. There is no reason to retard competition. Verizon should not be allowed to superimpose its calling areas on Global since there is no cost justification and Verizon is already fully compensated. The Commission should rule consistent with other Commissions that promote competition such as the Florida Commission²⁵ and the New York Commission²⁶, which have each approved LATA wide local calling areas. As a result, Florida and New York consumers will likely be the first to enjoy the benefits of these wider calling areas.

IV. Conclusion.

The FCC has provided clear guidance which cannot be ignored. The FCC's *Virginia Order* reinforces the progressive aspects of the Commission's Order in Global's previous arbitration with SBC. The FCC awarded the CLECs in Virginia with (1) the right to designate a single point of interconnection; (2) allocating financial responsibility to each carrier using the point of interconnection as the demarcation for both physical and fiscal purposes; and, (3) allowing CLECs to use non-geographically correlated NXXs without additional constraints. This Commission should continue to be a leader in

²⁵ Florida has adopted LATA-wide calling areas. See Florida Public Service Commission Special Commission Conference Agenda Issue 13 (Dec. 5, 2001): How should a "local calling area" be defined, for purposes of determining the applicability of reciprocal compensation? **RECOMMENDATION:** Staff recommends that parties be permitted to negotiate the definition of local calling area for the purposes of reciprocal compensation to be contained in their interconnection agreements. However, if negotiations fail, staff recommends that "local calling area" for the purposes of reciprocal compensation be defined as "all calls that originate and terminate in the same LATA."

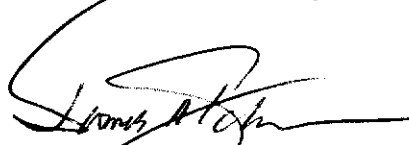
²⁶ *Petition of Global Naps, Inc., Pursuant To Section 252 (B) Of The Telecommunications Act Of 1996, For Arbitration To Establish An Inter-carrier Agreement With Verizon New York, Inc.*, Case 02-C-0006 (NYPSC May 22, 2002) ("*Global New York Order*").

promoting competition and view the FCC's *Virginia Order* as a foundation and standard for its decision in this case.

Date: August 5, 2002

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CERTIFICATE OF SERVICE

The undersigned hereby acknowledges that a copy of the foregoing REPLY BRIEF OF GLOBAL NAPs was served by electronic mail this 5th day of August, 2002 upon the following:

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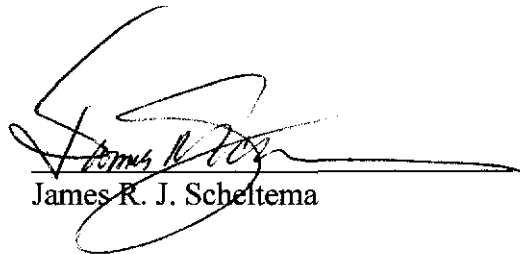
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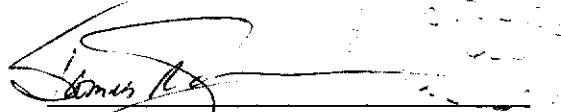
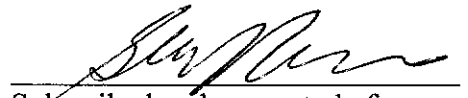
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VERIFICATION

I, James R. Scheltema, being first duly sworn, depose and state that I am an attorney for Global NAPs Illinois, Inc., that I have read the Reply Brief of Global NAPs Illinois, Inc. to be filed in Docket No. 02-0253 and know the contents thereof, and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.


James R. J. Scheltema
Subscribed and sworn to before me
this 5th day of August, 2002.
Notary Public

SUSAN K. HON
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires December 1, 2003